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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,585	07/25/2003	Toby Thunberg	3283.01US01	2989
26587	7590	04/07/2006	EXAMINER	
MCNEES, WALLACE & NURICK LLC 100 PINE STREET P.O. BOX 1166 HARRISBURG, PA 17108-1166			GROSSO, HARRY A	
		ART UNIT	PAPER NUMBER	
			3727	

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/627,585	THUNBERG ET AL.	
	Examiner	Art Unit	
	Harry A. Grosso	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 January 2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-29 is/are pending in the application.  
 4a) Of the above claim(s) 17-29 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-16 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 25 July 2003 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/7/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

***Election/Restrictions***

1. Applicant's election with traverse of Group I, claims 1-16 in the reply filed on January 19, 2006 is acknowledged. The traversal is on the ground(s) that examination of both the container claims (Group I) and the claims drawn to a method of making the container (Group II) would not pose a serious burden on the examiner. This is not found persuasive because the inventions of Group I and Group II have different classifications and the search for one would not necessarily require the same search as for the other. While some of the same areas might be searched for both, additional time and effort would be required to search and examine the limitations found in the non-elected invention and to address the additional claims represented by the non-elected invention. The additional time is considered to constitute a serious burden.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 17-29 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

***Drawings***

3. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the

applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the second flange element extending generally orthogonally from the body portion second section (claim 9) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 recites the limitation that the second flange element extends generally orthogonally from the body portion second section. Claim 5, from which claim 9 depends, states that the second flange element extends from the first flange element. It is unclear how the second flange element is to extend orthogonally from the body portion second section.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Blackburn et al (5,307,948) (Blackburn).
9. Regarding claim 1, Blackburn discloses a container with a body portion, an outer surface, a top edge, bottom edge and a generally circular base. The container has a flange member (40', 44', Figures 9-10) with a gap created when the flap 60 is bent down for opening of the container and a section of the outer body surface is exposed when the lid is removed.

Regarding claim 2, Blackburn discloses a frustoconical first section and a generally cylindrical second section (Figure 10).

Regarding claims 3 and 4, Blackburn discloses a lid (14) and the lid would be flexible, being made of a thermoplastic and having to flex for removal from the container body.

Regarding claim 5, Blackburn discloses a first flange element 40' and a second flange element (44') extending from the first flange element.

10. Claims 1-12 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Arshinoff et al (5,785,203) (Arshinoff).

11. Regarding claim 1, Arshinoff discloses a container with a body portion, an outer surface, a top edge, bottom edge and a generally circular base. The container has a flange member (24, Figures 1-6) with a gap created when the flap 64 is removed for opening of the container and a section of the outer body surface is exposed (column 4, lines 62-65).

Regarding claim 2, Arshinoff discloses a container with a generally frustoconical lower (first) portion and an upper portion, from just below the flange attachment point up, that is the second portion. The second portion would be generally cylindrical since the term generally is broad and allows for some variation.

Regarding claims 3 and 4, Arshinoff discloses a lid (12) and the lid would be flexible, being made of a polymer such as polyethylene and having to flex for removal from the container body.

Regarding claim 5, the flange has a first element (50, Figure 5) and a second element, the remaining portion of the flange, extending from the first element.

Regarding claims 6, 7, 10 and 11, Arshinoff discloses a multiplicity of ribs extending from the body to the flange and flange elements (Figure 1 where the rib appears to be present in the partial cross-section of the flange and 26, Figure 3, column 2, lines 31-35 and lines 64-65).

Regarding claims 8 and 9, the first element (50, Figure 5) is generally orthogonal to the body and the section of the second element under notch 54 is generally orthogonal with respect to the body.

Regarding claims 12 and 15, the gap of Arshinoff is about 40 degrees as measured in Figure 3.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blackburn.

Regarding claims 12, 15 and 16, Blackburn discloses the invention of claim 2 except for the dimension of the gap in degrees. It would have been an obvious matter of design choice to have made the gap of Blackburn in the range of 10 to 30 degrees since such a modification would have involved a mere choice of the size of the component. A

change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Regarding claims 13, and 14, Blackburn discloses the invention of claim 2 except for the dimension of the gap in centimeters. It would have been an obvious matter of design choice to have made the gap of Blackburn in the range of 1.5 to 3.5 since such a modification would have involved a mere change of the size of the component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

14. Claims 13, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arshinoff.

Regarding claims 13, and 14, Arshinoff discloses the invention of claim 2 except for the dimension of the gap in centimeters. It would have been an obvious matter of design choice to have made the gap of Arshinoff in the range of 1.5 to 3.5 since such a modification would have involved a mere change of the size of the component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Regarding claim 16, Arshinoff discloses the invention of claim 2 except for the dimension of the gap in the range of 10 to 30 degrees. It would have been an obvious matter of design choice to have made the gap of Arshinoff in the range of 10 to 30 degrees since such a modification would have involved a mere change of the size of the component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

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15. Claims 2 and 5-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arshinoff in view of Blackburn.

Regarding claim 2, Arshinoff discloses the invention of claim 1 except for the container having a generally cylindrical second portion. Blackburn discloses a similar container with a frustoconical first (lower) section and a generally cylindrical second section at the top of the container (Figures 11-12) with the flange connected to the body second section. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a container with frustoconical first section and a generally cylindrical second section at the top of the container with the flange connected in the to the body second section as disclosed by Blackburn in the container disclosed by Arshinoff because it is known in the art to construct pails in this manner and it provides for easier installation and removal of the lid with vertical walls at the top of the container.

Regarding claim 5, the flange has a first element (50, Figure 5) and a second element, the remaining portion of the flange, extending from the first element.

Regarding claims 6, 7, 10 and 11, Arshinoff discloses a multiplicity of ribs extending from the body to the flange and flange elements (Figure 1 where the rib appears to be present in the partial cross-section of the flange and 26, Figure 3, column 2, lines 31-35 and lines 64-65).

Regarding claims 8 and 9, Arshinoff discloses the first element (50, Figure 5) is generally orthogonal to the body and the section of the second element under notch 54 is generally orthogonal with respect to the body.

Regarding claims 12 and 15, Arshinoff discloses the gap location is about 40 degrees as measured in Figure 3.

Regarding claims 13, and 14, Arshinoff as modified by Blackburn discloses the invention of claim 2 except for the dimension of the gap in centimeters. It would have been an obvious matter of design choice to have made the gap of Arshinoff in the range of 1.5 to 3.5 since such a modification would have involved a mere change of the size of the component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Regarding claim 16, Arshinoff as modified by Blackburn discloses the invention of claim 2 except for the dimension of the gap in the range of 10 to 30 degrees. It would have been an obvious matter of design choice to have made the gap of Arshinoff in the range of 10 to 30 degrees since such a modification would have involved a mere change of the size of the component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Nathan Newhouse  
Supervisory Patent Examiner  
Art Unit 3727

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